

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RUSSELL UPLINGER, and all similarly
situated prisoners at F C I Lompoc and in
the Bureau of Prison's custody,

Plaintiff - Appellant,

v.

JOSE BARRON, JR., Warden; et al.,

Defendants - Appellees.

No. 02-56761

D.C. No. CV-01-06501-AHM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted and Argued October 17, 2005
Pasadena, California

Before: HUG, PREGERSON, and CLIFTON, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Plaintiff Russell Uplinger, a former federal prisoner, appeals the district court's judgment dismissing this action because he failed to exhaust his administrative remedies within the Bureau of Prisons. This court reviews de novo a district court's determination that a prisoner failed to exhaust administrative remedies. *See Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

Prisoners are required to exhaust "such administrative remedies as are available" before suing over prison conditions under federal law. 42 U.S.C. § 1997e(a). Further, prisoners are required to exhaust their administrative remedies, even when the administrative process "has authority to take some action in response to a complaint, but not the remedial action an inmate demands, to the exclusion of all other forms of redress." *Booth v. Churner*, 532 U.S. 731, 736 (2001). In this case, Uplinger did not exhaust his administrative remedies.

Although the complaint contained claims as to which the Bureau could not have provided relief, it also alleged that the Bureau improperly enacted policies to implement the DNA Act and unreasonably authorized excessive force to obtain blood samples. These claims could potentially have been addressed by the Bureau, and the record could have been further developed on these claims, had Uplinger pursued administrative relief prior to filing his complaint in federal court. The

district court's dismissal for failure to exhaust administrative remedies was appropriate.

AFFIRMED.